

EXHIBIT 104

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARVEL WORLDWIDE, INC.,)
MARVEL CHARACTERS, INC.,)
and MVL RIGHTS, LLC,)
Plaintiffs,)

vs.) Case No. 10-141-CMKF

LISA R. KIRBY, BARBARA J.)
KIRBY, NEAL L. KIRBY and)
SUSAN N. KIRBY,)
Defendants.)

CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER
VOLUME II
DEPOSITION OF STAN LEE
LOS ANGELES, CALIFORNIA
WEDNESDAY, DECEMBER 8, 2010

REPORTED BY:

Alejandria E. Kate

CSR NO. 11897, HI 448, RPR, CLR

JOB NO.: 35197

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DECEMBER 8, 2010
9:11 A.M.

Deposition of STAN LEE, held at the offices of VENABLE LLP, 2049 Century Park East, Suite 2100, Los Angeles, California, pursuant to agreement before Alejandria E. Kate, a Registered Professional Reporter and Certified Shorthand Reporter of the State of California.

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LOS ANGELES, CALIFORNIA
WEDNESDAY, DECEMBER 8, 2010
9:11 A.M.

STAN LEE,
the witness herein, having been first duly sworn,
was examined and testified as follows:

EXAMINATION

BY MR. TOBEROFF:

Q. Good morning, Mr. Lee.

A. Good morning.

Q. I'm going to start with the difficult questions first.

Could you please state and spell your full name for record.

A. My name is Stan Lee. S-T-A-N, L-E-E.

Q. Please state your current address for the record.

A. 9143 Oriole Way, Los Angeles, 90069.

Q. Other than -- you recall that you had your deposition taken in this case in May of this year? Do you recall that?

A. Yes.

Q. Excuse me. Yes, it was in May.

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APPEARANCES:

ATTORNEY FOR THE PLAINTIFFS:

WEIL, GOTSHAL & MANGES

BY: JAMES W. QUINN, ESQ.

RANDI W. SINGER, ESQ.

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-AND-

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NICHOLAS C. WILLIAMSON, ESQ.

JEFFREY R. RHOADS, ESQ. (Page 200)

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Los Angeles, California 90067

FOR THE WITNESS:

GANFER & SHORE

BY: ARTHUR LIEBERMAN, ESQ.

(APPEARANCE VIA VIDEO CONFERENCE)

360 Lexington Avenue

14th Floor

New York, NY 10017

ALSO PRESENT:

ELI BARD, Marvel Entertainment

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A. Pardon me?

Q. Strike that.

MR. QUINN: It was in May.

MS. SINGER: Yeah.

MR. LIEBERMAN: I can't hear either. You have to talk towards the speaker.

THE WITNESS: Do me a favor. I don't hear as well as I used to. If you could speak just a little louder.

BY MR. TOBEROFF:

Q. Certainly.

Aside from your May deposition in this case, had you ever had your deposition taken before that?

A. Before the May one? I don't remember.

Q. Was that your first deposition, the deposition you had in May?

A. I think so, yes.

MR. QUINN: Object only because it's unclear.

Do you mean in this case or in some other case ever?

MR. TOBEROFF: Any case.

THE WITNESS: Oh, oh. I've had depositions in other cases.

BY MR. TOBEROFF:

Q. How many other times have you been deposed?

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1 THE WITNESS: POW! was a company that I formed
 2 with two partners, Arthur Lieberman and Gill Champion,
 3 to do movies, television, publishing, whatever we could
 4 do in entertainment.
 5 BY MR. TOBEROFF:
 6 Q. Does that include live-action theatrical
 7 motion pictures?
 8 A. Yes.
 9 Q. Does that also include animated theatrical
 10 motion pictures?
 11 A. Yes.
 12 Q. Does it include live-action television series?
 13 A. Yes.
 14 Q. When was POW! first established,
 15 approximately?
 16 A. About six years ago. Again, I'm no good at
 17 dates, but somewhere around there.
 18 Q. Less than ten years ago?
 19 A. Yeah. I think less than ten.
 20 Q. And what is your corporate position at POW!
 21 Entertainment?
 22 A. My personal position?
 23 Q. Yes.
 24 A. I think I'm the chairman and the chief
 25 creative officer.

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1 seeing this. I -- I don't read the contracts in our
 2 company.
 3 Q. I understand.
 4 A. I don't know what this is.
 5 Q. But this -- your understanding is that this
 6 agreement gives you a first look -- a producing deal
 7 with Disney?
 8 A. I know we have that look. I don't know that
 9 this is the agreement. I mean, I'd have to sit and
 10 read this whole thing, which bores the hell out of me.
 11 MR. QUINN: The document speaks for itself.
 12 He did not sign it.
 13 BY MR. TOBEROFF:
 14 Q. Whether or not this is the document
 15 commemorating your first-look agreement with Disney,
 16 POW! has a first-look agreement with Disney; correct?
 17 A. Absolutely.
 18 MR. TOBEROFF: Please mark the next exhibit as
 19 Exhibit 17.
 20 (Whereupon, Defendants' Exhibit Number
 21 LEE 17 was marked for identification.)
 22 MR. TOBEROFF: Exhibit 17 is an agreement
 23 dated as of December 18th, 2009 between POW!
 24 Entertainment, Inc.
 25 MR. LIEBERMAN: What's the date of that again?

1 Q. Other than yourself and the two people you
 2 mentioned, how many other people work at POW!
 3 Entertainment?
 4 A. At the moment, there's -- Mike and Ron --
 5 eight total.
 6 Q. Eight people.
 7 And last year, in 2009, did less people work
 8 at POW! Entertainment?
 9 A. Yeah. Last year we had -- I think we had six.
 10 Q. And is that six in addition to Gill?
 11 A. No, that's including all of us.
 12 Q. Including.
 13 So the number you gave me for 2010 was
 14 including everyone?
 15 A. Yes.
 16 Q. Okay. So under this agreement, Exhibit 16,
 17 dated as of March 20, 2006, POW! has a first-look
 18 agreement, as they call it in the motion picture
 19 industry, a first-look agreement with Disney; correct?
 20 A. Yes.
 21 Q. And it's your understanding that Silver Creek
 22 Pictures, Inc. is a -- is owned by Disney?
 23 A. No.
 24 Q. What is Silver Creek Pictures, Inc.?
 25 A. I have no idea. I mean, I don't even remember

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1 MR. TOBEROFF: December 18th, 2009. It's
 2 dated as of December 18th, 2009. Between POW!
 3 Entertainment, Inc. and Silver Creek Pictures, Inc.
 4 MR. LIEBERMAN: Thank you.
 5 MR. TOBEROFF: Bates Numbers Lee 201 to Lee
 6 211.
 7 Q. This agreement, you'll notice, Mr. Lee,
 8 Exhibit 17, in the re on the first page, it says,
 9 "Stan Lee/Overall Agreement/Fifth Amendment."
 10 A. Uh-huh.
 11 Q. And this -- the date is as of December 18,
 12 2019 [sic].
 13 A. No. 2009.
 14 Q. 2009. Excuse me. Thank you.
 15 Because this is dated as of December 18th,
 16 2009, I assume it was executed after that date.
 17 Does that comport with your recollection?
 18 A. No.
 19 MR. QUINN: Objection.
 20 THE WITNESS: I don't have a recollection
 21 about this. I don't read the contracts at our company.
 22 MR. QUINN: Again, he didn't sign this.
 23 MR. TOBEROFF: Okay. As you said, the
 24 document speaks for itself.
 25 MR. QUINN: Okay.

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1 Thomas in this case. Bates Number 365 to 82.

2 This is an interview that you appeared to have
3 given with the American Archive of American Television
4 on March 22, 2004.

5 Did you give this interview with the American
6 Archive of American Television?

7 A. Yes.

8 Q. Please turn to Page 3, second column.

9 A. I'm sorry. Did you say Page 3?

10 Q. Page 3, second column. All the way down in
11 your response on the second column -- excuse me, all
12 the way down the second column of that page, you see
13 the questioner is Lisa Tarata, and she asked the
14 following question: "Can you talk a little bit
15 about -- and you mentioned that what the comic book
16 industry was like there. It didn't have a great
17 reputation at the time. But can you just talk a little
18 bit of what the industry looked like in the early
19 '40s."

20 And you respond, "Well, in the early '40s --
21 and, again, I'm not really good at this, I have the
22 word's worst memory for detail," and then you continue.

23 Do you see that?

24 A. Yes.

25 MR. TOBEROFF: I'd just like to show you one

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1 And you respond, "Unfortunately, I have
2 probably the worst memory in the world. It makes me
3 happy for this reason. If my memory was just bad now,
4 I would figure it's old age and I'm getting senile.
5 But I've always had a bad memory. When I went to work
6 for Marvel I had a bad memory."

7 Do you see that?

8 A. Yes.

9 MR. QUINN: And it says "laughter" right after
10 that. Just like the last time.

11 BY MR. TOBEROFF:

12 Q. Is it fair to say, Mr. Lee, that you've been
13 pretty consistent over the years in honestly stating
14 that you got a bad memory?

15 A. I joke about it.

16 Q. So do you believe you have a bad memory or a
17 good memory?

18 A. I have a bad memory for details. I don't
19 remember dates. I don't remember amounts of monies or
20 things like that. But I have a good memory for other
21 things.

22 Q. So when they were asking you for details, and
23 you told them you had a bad memory, did you know the
24 answer to their questions and you were avoiding it by
25 telling them that you had a bad memory?

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1 more. We'll mark this 31, Lee Exhibit 31.

2 (Whereupon, Defendants' Exhibit Number
3 LEE 31 was marked for identification.)

4 BY MR. TOBEROFF:

5 Q. Exhibit 31 is an excerpt from David Anthony
6 Kraft's Comic Interview Number 64 that was published in
7 1988. And there's -- on the first page of this
8 interview, there's a picture of you with your hand on a
9 provocative statue.

10 Do you see that?

11 A. (No audible response.)

12 Q. Did you give this interview?

13 A. I suppose so. Yes.

14 Q. Please turn to Page 15. I'd like to draw your
15 attention to something in the interview.

16 Page 15 in the first column, where the
17 interviewer -- where it's connoted by Darryl, it says
18 the following: "It's kind of amusing. With all of the
19 collecting and indexing and cataloging over the years,
20 people still aren't certain they have everything that
21 Marvel put out in their catalogue and indexes and so
22 on. You wouldn't happen to have some vague memory of
23 some missing Marvel they could get after?"

24 I believe the interview is missing a word,
25 "material."

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1 A. No. I never avoided anything.

2 MR. QUINN: Objection. Unclear.

3 Go ahead.

4 THE WITNESS: I say it was something that I
5 joked about, I've written about. And when I've
6 lectured, I've joked with the audience about and they
7 joke back with me about it. It's like a standing joke
8 with me and a lot of my fans, my bad memory.

9 BY MR. TOBEROFF:

10 Q. I see.

11 A. So I make as much of it as I can because
12 anything that provides a little humor in this sordid
13 world of ours, I think is a good thing.

14 Q. I agree.

15 MR. QUINN: Note the laughter.

16 MR. TOBEROFF: I'd like to mark as Exhibit 32
17 the May 13th, 2010, deposition transcript of Stan Lee
18 in this case.

19 (Whereupon, Defendants' Exhibit Number
20 32 was marked for identification.)

21 MR. TOBEROFF: Actually, I'm not going to mark
22 this as an exhibit.

23 (Whereupon, Defendants' Exhibit Number
24 32 was withdrawn.)

25 MR. QUINN: Do you have another copy? Because

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MR. TOBEROFF: Thank you.
 THE COURT REPORTER: So stipulated?
 MR. FLEISHCHER: So stipulated.
 (Time noted: 5:01 p.m.)
 -o0o-

 STAN LEE

Subscribed and sworn to before me
 this ____ day of _____, 20 ____.

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C E R T I F I C A T E

STATE OF CALIFORNIA)
) ss.
 COUNTY OF LOS ANGELES)

I, ALEJANDRIA E. KATE, a Registered
 Professional Reporter and Notary Public
 within and for the State of California,
 do hereby certify:

That the foregoing record of
 proceedings is a full and correct
 transcript of the stenographic notes taken
 by me therein.

In witness whereof, I have hereunto
 set my hand this 20th day of December,
 2010.

 ALEJANDRIA E. KATE, CSR 11897

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ERRATA SHEET

NAME OF CASE: "MARVEL WORLDWIDE VS. LISA R. KIRBY"

DATE OF DEPOSITION: DECEMBER 8, 2010

NAME OF WITNESS: STAN LEE

Reason Codes:

1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

Page _____ Line _____ Reason _____

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STAN LEE